

## **TITLE 2. CALIFORNIA STATE LANDS COMMISSION**

### **NOTICE OF PROPOSED ADOPTION OF REGULATIONS GOVERNING CONTRACTOR SELECTION**

***NOTICE IS HEREBY GIVEN*** that the California State Lands Commission (the Commission) proposes to adopt regulations implementing California Government Code Section 4526 as described below.

#### **PROPOSED REGULATORY ACTION**

The Commission proposes to adopt Title 2, Sections 2980 through 2980.9, of the California Code of Regulations. The effect of this action would be to modify the manner in which contractors are selected by the Commission.

These same regulations were proposed and adopted by the Commission in 2000. However, the Office of Administrative Law found that the procedures followed did not fully comply with the Administrative Procedures Act. The previous adoption is therefore void. Except for several minor changes in language, the regulations here proposed are the same as those previously adopted.

#### **AUTHORITY**

*Authority* : Government Code Section 4526 and Public Resources Code Section 6108.

*Reference*: Government Code Sections 4526 through 4529.5 and Public Resources Code Section 6108

#### **WRITTEN COMMENT PERIOD**

Any interested person may submit written comments relevant to the proposed regulations. Written comments must be received by April 13, 2001, at 5:00 p.m. Please send or deliver comments to:

Mark Meier  
California State Lands Commission  
100 Howe Avenue, Suite 100 South  
Sacramento, CA 95825  
Telephone: 916-574-1853  
ATSS: 481-1853  
FAX: 916-574-1855  
E-Mail: [meierm@slc.ca.gov](mailto:meierm@slc.ca.gov)

No public hearing is scheduled. However, any interested person or his or her duly authorized representative may request, no later than fifteen (15) days prior to the close of the written comment period, a public hearing pursuant to Government Code Section 11346.8.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Under prior law, when the Commission contracted for architectural, landscape architectural, engineering, environmental, land surveying, or construction project management services, those services had to be obtained through a competitive bidding process. Ordinarily, the lowest qualified bid would be accepted. However, Government Code Section 4526 now requires that agencies contracting for private architectural, landscape architectural, professional engineering, environmental, land surveying, and construction project management services adopt by regulation procedures that assure that these services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices to the public agencies. Furthermore, these procedures must assure maximum participation of small business firms, as defined by the Director of General Services pursuant to Government Code Section 14837. In addition, the procedures adopted must specifically prohibit practices which might result in unlawful activity, including, but not limited to, rebates, kickbacks, or other unlawful consideration, and must specifically prohibit government agency employees from participating in the selection process when those employees have a relationship with a person or business entity seeking a contract under this section which would subject those employees to the prohibition of Government Code Section 87100. The proposed regulations implement the requirements of Section 4526 with respect to contractor selection by the Commission.

Section 2980 describes the purpose and scope of the new regulations; i.e., to establish, as authorized and required by Government Code Sections 4525 *et seq.*, procedures for securing architectural, landscape, architecture, engineering, environmental, land surveying, and construction project management services.

Section 2980.1 provides definitions of terms used in the regulations. In most cases, the definitions are taken directly from Government Code Section 4525.

Section 2980.2 prohibits conflicts of interest and unlawful activity by Commission employees in the contractor selection process. This language is required under Government Code Section 4526.

Section 2980.3 establishes procedures whereby firms interested in providing services covered by these regulations could be added to a list of prequalified contractors. This process would simplify the ultimate selection process.

Section 2980.4 requires those proposing to provide construction project management services to submit specified evidence of expertise and experience. The language is taken directly from Government Code Section 4529.5.

Section 2980.5 provides the procedures to be followed by the Executive Officer when seeking a contractor for a particular project. The Executive Officer is required to publish a statewide announcement that is to contain, at a minimum, the type of services required, a description of the project, a projected schedule for the project, a description of responsive material that must be submitted by firms not on the Commission's list of pre-qualified firms, and a date before which that responsive material must be submitted to the Commission. The announcement is also to include a list of relevant factors, if any, that may be considered by the Executive Officer in selecting a contractor for that particular project. Finally, the Executive Officer must endeavor to provide to all small business firms which have indicated an interest in receiving such announcements a copy of each project announcement. Failure of the Executive Officer to send a copy of an announcement to any firm or failure of such firm or firms to receive an announcement sent by the Executive Officer shall not operate to preclude any contract.

Section 2980.6 requires that, before any discussion with a firm concerning fees for services provided in connection with a particular project, the Executive Officer is to cause an estimate of the value of such services to be prepared. This estimate shall serve as a guide in determining fair and reasonable compensation for the services rendered.

Section 2980.7 establishes the procedures the Executive Officer is to follow in negotiating with firms for services to be provided for a particular project. The Executive Officer is to evaluate current statements of qualifications and performance data on file with the Commission, together with those that may be submitted by other firms regarding the proposed project, and is to conduct discussions with no less than three firms regarding the Commission's need for services and the ability of each firm to provide those services to the Commission for the proposed project in a timely manner. The Executive Officer is then required to select the list of firms to be considered no less than three of the firms deemed to be the most highly qualified to provide the services required. The Executive Officer must then negotiate a contract with the best-qualified firm for services at compensation that the Executive Officer determines is fair and reasonable to the State of California. Should the Executive Officer be unable to negotiate a satisfactory contract with the firm considered to be the best-qualified at a price the Executive Officer determines to be fair and reasonable to the State of California, negotiations with that firm shall be formally terminated. The Executive Officer must then undertake negotiations with the second best-qualified firm. Failing accord with the second most qualified firm, the Executive Officer shall terminate negotiations. The Executive Officer shall then undertake negotiations with the third most qualified firm. Should the Executive Officer be

unable to negotiate a satisfactory contract with any of the selected firms, the Executive Officer is to select additional firms in order of their competence and qualifications and continue negotiations in the same manner until a satisfactory agreement is reached.

Section 2980.8 provides that, should the Commission determine that it is necessary or desirable to have a given project performed in phases, it will not be necessary to negotiate the total contract price or compensation provisions at the time the initial phase is negotiated, provided that the Executive Officer has determined that the firm is the best qualified to perform the whole project at a fair and reasonable cost and that the contract contains provisions that the State, at its option, may utilize the firm for other phases and that the firm will accept a fair and reasonable price for subsequent phases to be later negotiated and reflected in a subsequent written instrument.

Section 2980.9 provides that, in instances where the Commission or the Executive Officer orders a necessary change in the character or scope of work to be performed in the course of performance of the contract, the firm's compensation may, by written agreement between the Commission and the firm, be adjusted in an amount which reasonably reflects the value of the change from that character and scope of work which existed prior to the change.

## **FINANCIAL IMPACTS**

The Commission has determined that the proposed regulations will have no significant impact upon any of the following:

- (1) Creation or elimination of jobs within the State of California;
- (2) Creation of new businesses or the elimination of existing businesses within the State of California; or
- (3) Expansion of businesses currently doing business within the State of California.

The Commission has made an initial determination that the proposed regulations will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulations are intended to simplify existing contracting procedures. The proposed regulations will require that announcements of projects will be made to businesses statewide, and all businesses, both large and small, will have opportunities to offer their services.

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The Commission has determined that adoption of these regulations will not affect small businesses because compliance requirements are upon the Commission, rather than upon any small business. No small business is required to enforce the regulations, and no small business will derive any benefit or detriment from enforcement of the regulations.

The Commission has determined that the proposed regulations do not impose any costs or mandate upon any local agencies or school districts.

The Commission has also determined that the proposed regulations do not impose any mandate requiring state reimbursement to any local agency or school district, pursuant to Government Code Sections 17500 *et seq.* No other non-discretionary cost or savings imposed on local agencies is anticipated.

The Commission has determined that the proposed regulations may result in minimal cost savings to the Commission due to streamlined contracting procedures. No other costs or savings to any other state agencies are anticipated.

The Commission has made an initial determination that the proposed regulations will have no significant effects on housing costs.

The Commission has determined that the proposed regulations do not duplicate or conflict with Federal regulations.

The Commission has determined that the proposed regulations will have no impact on costs or savings in Federal funding to the State.

## **CONSIDERATION OF ALTERNATIVES**

The Commission must determine that no reasonable alternative considered by the Commission or that has otherwise been identified and brought to the attention of the Commission would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Commission invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

## **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The Commission has prepared an Initial Statement of Reasons that provides an explanation of the purpose, background, and justification of the proposed regulations. This statement is available on request from the contact person listed

below. A copy of the express terms of the proposed regulations, as well as any other information in the Commission's rulemaking file, is also available from the contact person.

Copies of this notice, the Initial Statement of Reasons and the text of the proposed regulations may also be found at the Commission's Internet web site, [www.slc.ca.gov](http://www.slc.ca.gov).

## **CONTACT PERSON**

Inquiries concerning the proposed regulations and the substance of the proposed action may be directed to:

Mark Meier  
Senior Staff Counsel  
California State Lands Commission  
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Sacramento, CA 95825-8202  
Telephone: 916-574-1853  
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E-Mail: [meierm@slc.ca.gov](mailto:meierm@slc.ca.gov)

or to:

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## **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

Following the public comment period, the Commission may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly indicated, shall be made available to the public for at least fifteen days prior to the date on which the Commission adopts the regulations. Requests for copies of any modified regulations should be sent to the attention of Mark Meier at the address indicated above. The Commission will accept written comments on the modified regulations for fifteen days after the date on which they are made available.

## **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Once the Final Statement of Reasons has been prepared pursuant to Government Code Section 11346.9(a), a copy of that Final Statement of Reasons may be requested from one of the Contact Persons listed above, or a copy may be obtained through the Commission's web site, found at [www.slc.ca.gov](http://www.slc.ca.gov).